IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.934 OF 1988

1. Popat Anna Neel
2. Vishwambhar Anna Neel
3. Ankush Ananta Neel ...Appellants

Vs.

State of Maharashtra ...Respondent

Mr.T.E.Mane for Appellants.
Mr.D.S.Mhaispurkar A.P.P.

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : OCTOBER 18, 2004.

ORAL JUDGMENT : **(PER ABHAY S.OKA,J.)**

1. By this Appeal the accused No.1 has taken exception to the Judgment and Order dated 14th October 1988 passed by the learned Additional Sessions Judge, Solapur. By the impugned Judgment and Order the Appellant was held guilty of commission of offence punishable under Section 302 of Indian Penal Code and was sentenced to suffer imprisonment for life. The case of the prosecution is that the Appellant along with three other accused on 10th July 1985 at about 8.00 a.m. in the field bearing Gat No.160 of village Nimgaon, Taluka Karmala District Solapur in furtherance of their common intention committed murder by intentionally or knowingly causing death of one Atmaram Santu Neel and thereby committed

offence punishable under Section 302 read with Section 34 of Indian Penal Code. The case of the prosecution is that the land of the Appellant-accused No.1 was adjacent to the land of the deceased. There is a 'Bandh' in between the two lands. There was a dispute between the accused and deceased Atmaram over the said 'Bandh'. As a result of which before the date of incident there were quarrels between the parties on 2 to 3 occasions. On the date of incident, the deceased went to his field for ploughing early in the morning . When his wife Godabai visited the field for supplying breakfast to the deceased, she saw the accused beating her husband. The Appellant gave a blow of spade over the left ear of the deceased. The said Godabai with a view to make hue and cry went back to the village and on the way back she met the Police Patil and she sought help of Police Patil. The Police Patil and other three persons went towards the land and on the way accused No.2 met them and stated that the deceased had expired.

2. The learned counsel appearing for the Appellant submitted that there was a gross delay in recording the First Information Report. He submitted that the conduct of P.W.No.2 Godabai was very strange. When according to the said Godabai she saw the accused assaulting her husband, instead of making attempt to save her husband or instead of shouting, she went back to the village. He submitted that from the place of incident the said Godabai accompanied the

Police Patil in a bullock cart to village Salse and from village Salse they went by S.T.Bus to Karmala Police station. He submitted that the F.I.R. was registered two hours after they reached Karmala Police Station and therefore, it was obvious that after discussion it was decided to implicate the accused. He submitted that the said Godabai claims that she had brought breakfast to the field of the deceased. He stated that in the scene of offence panchanama nothing was found at the spot of the incident. He submitted that even the Police Patil had not made any entry of the incident in the form of 'Khabri Report'. He submitted that there was a political rivalry in the two groups in the village. He submitted that the two groups were headed by Madhukar and P.W.No.3 Bhagwat. He stated that P.W.No.3 admitted that the Police Patil Digambar Namdeo Patil-P.W.No.7 belongs to group headed by P.W.No.3 Bhagwat. Accused No.2 Vishwambhar Anna Neel belongs to the rival group headed by one Madhukar and hence P.W.No.7-Digambar Namdeo Patil falsely implicated the accused persons. He submitted that the evidence of the prosecution witnesses was full of inconsistencies, contradictions and omissions. He submitted that according to the prosecution the clothes of the deceased were found below his head. He submitted that it was most unlikely that the accused after killing the deceased kept the clothes below his head. He submitted that there are serious infirmities in the prosecution case and in any event the guilt of the accused is not established beyond reasonable doubt. He, therefore,

submitted that the conviction and the sentence passed against the Appellant deserves to be quashed and set aside.

3. The learned A.P.P. appearing for the State submitted that the evidence of P.W.No.2 Godabai itself establishes the guilt of the accused beyond reasonable doubt. He submitted that there is hardly any delay in recording F.I.R. He pointed out that P.W.No.2 Godabai along with Police Patil had to travel upto village Salse by bullock cart and from village Salse they had to take S.T.Bus for reaching Karmala Police Station. He submitted that after reaching the police station, the F.I.R. has been recorded in a reasonable time. He submitted that the evidence of P.W.No.2 has been fully corroborated by the medical evidence on record. He submitted that the guilt of the Appellant has been established beyond reasonable doubt.

4. We have considered the rival submissions. There is hardly any dispute regarding homicidal death of the deceased. P.W.No.1 Rajendra Vishwanath Lonikar was the Medical Officer in the Municipal Hospital at Karmala who performed the post-mortem of the body of deceased Atmaram. He found the following external injuries on the body of deceased Atmaram :

1.C.L.W.over uppe occipital scalp 1" x 1/2"

2.C.L.W. 1 x 1 x 1 1/2" to the left and lower side of injury No.1.

3. C.L.W. over left zygoma oblique 3/4 x 1/2 x 1/2".

4. Left ear was cut obliquely in the lower half part.

5. Swelling over left zygoma 1" in diametre. Abrasion of red colour over right renal anagle, 3" x 2".

He stated that injury Nos.1 to 4 might have been caused by sharp object and injury Nos. 5 and 6 by blunt object. The internal injuries found by the said Medical Officer are as under :

i) Haematoma under the scalp in the posterior half part.

ii) Fracture of left temporal bone. Also there was fracture of occipital bone as in diagram in col.no.19.

iii)The coverings were torn at the fracture line. The brain was semiliquid. The brain could be seen between the fracture line.

iv) There was a fracture of skull through and through the petrous bone.

v) Hametoma in the thorasic region and fracture of left 10th rib at the anterior coverature.

vi) The plueura was torn at the fracture site.

vii)In the abdominal region cavity contains blood about 2 litres.

viii)The right kidny was fractured at the hilus, 2 x 2 x 2".

He deposed that the injuries on the person of deceased Atmaram are possible with an assault by a spade like Article. He stated that the cause of death of accused Atmaram was due to neuro Haemarrohage shock due to fracture of skull. In the cross examination he stated that the external injuries No.3,4 and 5 could be possible by pelting of a stone. He stated that if a person having received a blow of stone falls on the ground injury No.1 and 2 are possible.

5. P.W.No.2 Godabai stated in her evidence that the deceased was possessing about 22 acres of land within limits of village Nimgaon. The said land was divided in three parts at three different places. One of the three portions of the land was known as ‘Das’ which was at distance of 2 furlongs on northern side of the house of the deceased. P.W.No.2 identified all the four accused before the Court and stated

that the accused were possessing agricultural land in the same village and the Appellant-accused No.1 was holding the land which is adjacent to the land of the deceased. The land of the deceased and the land of the Appellant are separated by a Bandh. She deposed that there were quarrels between the deceased and the accused over the dispute about the Bandh. She stated that on the date of incident the deceased had gone to the field for ploughing. At about 7.30 a.m. she left her house for providing breakfast to the deceased. When she reached the field of the deceased, she saw the accused assaulting her husband. She saw accused No.2 was making Atmaram fall on the ground and accused Nos. 3 and 4 giving kick blows to Atmaram and Appellant-accused No.1 was giving a blow of spade over the left ear. On seeing her husband being assaulted she returned to the village for making hue and cry for getting help. When she reached near the temple she met Police Patil Digambar Namdeo Patil (P.W.No.7.) and she informed the P.W.No.7 about the incident. P.W.No.7, P.W.No.2 along with three other persons who were near the temple proceeded towards the said land. On the way, accused No.2 met the Police Patil. She stated that she could not hear the talk which took place between the accused No.2 and the Police Patil. When she asked the accused no.2 why the accused had assaulted her husband, accused No.2 stated that her husband was dead. When they reached the field they found that her husband Atmaram was already dead. There was bleeding injuries through nose and mouth. She stated that they saw a

pick-axe at the place of incident. She stated that the Police Patil instructed the Kotwal to remain present near the dead body. She along with Police Patil came to village Salse in a bullock cart and from village Salse they took a S.T.bus and reached the police station at Karmala where P.S.I. Shri Kadam recorded her complaint. P.S.I. came to the village at 5.00 p.m.and P.W.No.2 showed the place of incident and dead body to the P.S.I. She stated that village Nimgaon is at a distance of six miles from Salse and from village Salse, Karmala is about 4 to 5 miles. In the cross examination she stated that she saw the incident from a distance of 10 to 15 feet. She stated that she did raise hue and cry. She stated that she did not intervene in the quarrel. She stated that the assault lasted only for 5 to 10 minutes. She denied the suggestion that there is a residential house of certain persons in between the land of the deceased and village Nimgaon. It is pertinent to note that in the cross examination of P.W.No.2 no omissions have been brought on record. The evidence of P.W.No.2 is consistent with the F.I.R. at Exh.21.

6. P.W.No.3 Bhagwat Gajaba Neel is a Panch Witness who supported the prosecution. He is a Panch Witness to scene of offence panchnama. The evidence of P.W.No.3 was challenged in the cross examination by giving suggestions to the witness regarding existence of two political groups in the village and that the witness belongs to the political group of

Digambar Namdeo Patil-P.W.No.7. The said witness is also a witness to the scene of Panchnama.

7. P.W.No.4 Mahadev Namdeo Takale is a Panch Witness to the recovery of spade at the instance of the Appellant. The said witness turned hostile and was permitted to be cross examined by the Public Prosecutor. P.W.No.5 Arjun Ganpat Jagadale is also Panch Witness to the recovery of spade at the instance of the Appellant. He also turned hostile. P.W.No.6 Babaji Pathangare is working as agricultural assistant. He stated that on 28th June 1995 he visited village Nimgaon for giving work to the labourers in connection with Bunding work. He stated that on that day the work of putting Tal in between the field of Madhukar Neel and deceased Atmaram was carried out. He stated that deceased Atmaram raised oral objection before him to the work of repairs of Bunding and Tal in his land. P.W.No.7 Digambar is the Police Patil. The evidence of Digambar is consistent with the evidence of P.W.No.2. He stated in his evidence that he along with Godabai reached Karmala at about 2.15 or 2.30 p.m. Thereafter, P.S.I. recorded a complaint of P.W.No.2 in his presence. He stated that at about 5.30 p.m. he returned to Nimgaon along with police when the scene of offence was shown by P.W.No.2 to the Police. In the cross examination a suggestion was given that he was on cross terms with the Appellant-accused Nos.1 and 2. He denied the correctness of the said suggestion. An omission was brought on record regarding the statement made

by him in examination-in-chief that accused No.2 told him that accused No.1 had assaulted deceased Atmaram with the spade. It is specifically recorded by the learned Judge that an omission was only regarding the use of spade. He admitted that he has not issued "Khabri report."

8. P.W.No.8 is Jyotiram Maruti Barade. He was declared hostile and therefore nothing turns on his evidence. P.W.No.9 is Sudhir Wamanrao Kadam, P.S.I. attached to Karmala Police Station. He deposed that Godabai, P.W.No.7 Digambar came to the Police station at about 2.15 to 2.30 p.m. and he recorded a complaint made by P.W.No.2. He stated that he thereafter immediately went to village Nimgaon and reached the village at about 5.00 p.m. He stated that scene of offence was shown to him by P.W.No.2. He deposed about the recovery of spade at the instance of the Appellant and recovery panchnama was proved in his evidence. In the cross examination he denied the suggestion that P.W.No.2 Godabai and her father came to the police station and after consultation P.W.No.2-Godabai's complaint was recorded. The omission of P.W.No.7 in the statement regarding use of spade was proved by the P.W.No.9. P.W.No.10 is Gulab who was the Police Constable attached to Karmala Police Station and was examined to prove the dispatch of articles to the office of chemical analyser, Pune.

9. In so far as P.W.No.2 is concerned, as stated earlier, there are no omission brought on record in the her evidence. The learned Counsel for the Appellant made a grievance that though it is the case of the P.W.No.2 that she brought breakfast to the field, nothing was found at the scene of offence panchnama. It is pertinent to note here that P.W.No.2 has not stated that she left the basket containing the breakfast near the scene of offence. The learned Counsel for the Appellant has made detailed submission on delay in recording the F.I.R. From the cross examination of P.W.No.2 and P.W.No.7 it is clear that it is not the case of the Appellant that after the incident P.W.No.2 and P.W.No.7 spent any time in the village. The total distance from village Nimgaon to Karmala may be about 12 to 13 miles. The P.W.No.2 and P.W.No.7 had to travel up to village Salse by a bullockcart and from village Salse they travelled upto Karmala by S.T.Bus. The evidence shows that they reached the police station at about 2.30 p.m. Nothing concrete is brought on record to show that there was anybody else also accompanying them to police station. After recording her detailed complaint, P.W.No.9 came to village Nimgaon at about 5.00 p.m. Considering these facts it is very clear that there is a hardly any delay on the part of P.W.No.2 in reaching the police station. If the F.I.R. was not recorded in the Police Station immediately, this by itself is not sufficient to disbelieve the prosecution case. In our opinion, this delay is insignificant and cannot affect the

core of prosecution case. From the fact that the Police Officer visited the scene of offence by 5.00 p.m. it appears that the complaint was recorded in a reasonable time by P.W.No.9. When P.W.No.2 immediately started for Karmala for recording complaint and when her complaint was recorded within a reasonable time after she reached the police station, it is difficult to accept the submission of the learned Counsel that there was an inordinate delay in recording the F.I.R.

10. P.W.No.2 has clearly deposed that by a spade the Appellant gave a blow over the left ear of the deceased Atmaram. There is no reason to disbelieve the version of P.W.No.2 who was the eye witness. Since the P.W.No.2 is the wife of the deceased, we have carefully scrutinised her evidence. As held by the Supreme Court in the case of Sucha Singh and another Vs. State of Punjab reported in (2003) 7 SCC page No.643, relationship is not a factor to affect the credibility of witness. There are hardly any discrepancies and contradictions in her evidence. Her evidence is consistent with the F.I.R. recorded on the same day. There is nothing in the cross examination of P.W.No.2 which has shaken her evidence. The medical evidence is consistent with the version of P.W.No.2. The external injuries on the deceased show that the left ear of the deceased was cut obliquely in lower half part. There are corresponding internal injuries in the form of fracture of left temporal

bone. There was also fracture of skull through and through the petrous bone. The report of the chemical analyser shows that the clothes worn by the deceased had number of blood stains. The earth and stones collected at the scene of offence was also mixed with blood. The spade was stained with blood of 'B' group. The blood group of the Appellant is 'A' as per the report of the chemical analyser. The chemical Analyser's report also shows that there were blood stains on the shirt of the Appellant. The blood group of the deceased was 'B' and the blood found on the spade was of 'B'group. It is thus clear that the other evidence on record corroborates the version of P.W.No.2. Thus, the prosecution has proved that the Appellant has assaulted the deceased with spade.

11. The deceased had fracture of the skull through and through the petrous bone. As per the opinion of the Medical Officer injuries on the person of the deceased on the vital part were sufficient in ordinary course to cause death. When the Appellant used spade for assaulting the deceased it is obvious that his intention was to inflict injuries actually suffered by the victim. The said injuries are sufficient in ordinary course of nature to cause death. In the circumstances, the offence will be punishable under section 302 of Indian Penal Code.

12. We have also perused the various Judgments cited before us. The learned Counsel for the Appellant relied upon the

judgment of the Apex Court reported in A.I.R.1979 S.C. page No.135 (Ganesh Bhavan Patel V. State of Maharashtra) and submitted that as held by the Apex Court as there was an inordinate delay in recording the F.I.R., it can be said that the prosecution story was conceived and constructed after consultation. We have already held that there was no inordinate delay in recording the F.I.R. Hence, the said decsion is of no help to the Appellant.

13. We have perused the impugned Judgment and Order. We find that the learned Sessions Judge has considered the entire evidence on record and after considering the submissions of the parties and after appreciating the evidence, a finding was recorded by the learned Sessions Judge regarding guilt of the Appellant. There is no reason to disbelieve the finding recorded by the learned Sessions Judge.

14. There is no merit in the Appeal. Hence, Appeal is dismissed.

15. The Appellant is already on bail. Time of eight weeks is granted to the Appellant to surrender.

16. Certified copy is expedited.

(SMT.RANJANA DESAI,J.)

(ABHAY S.OKA,J.)